HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 3686 (M/S) 2001
Punjab & Sind Bank
Vs.
Additional District Judge
Dehradun & others.

Approved for reporting.

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~~Not approved for reporting~~

Decided on 24/11/2004.

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

WRIT PETITION NO. 3686 (M/S) OF 2001.
(Old No. 17103 of 2000)

Punjab & Sind Bank .....Petitioner.

Versus

Additional District Judge, Dehradun

.....Respondents.

Hon'ble Rajesh Tandon, J.

By the aforesaid writ petition the petitioner has prayed for the issue of a writ of certiorari for quashing the orders dated 9.2.1990 and 8.12.1999 passed on the application under Section 21 (8) of U.P. Act No. XIII of 1972.

Factual Aspects Of The Case:- Briefly stated the landlord has field an application under Section 21 (8) of U.P. Act No. XIII of 1972 stating therein that the premises in dispute is a double storied building including one additional room, known as Badhwar building.

According to the landlord Shri Ratan Lal Badhwar had let out the building to the petitioner at a monthly rent of Rs. 800/- per month in pursuance of an agreement dated 23.4.1970 which was later on enhanced on 15.7.1976 to Rs. 1100/-. The agreement expired on 14.7.1983. The landlord has submitted that on 1.7.1980 since one more additional room was let out to

the petitioner and therefore, the rent was enhanced to the extent of Rs. 1350/- per month.

The landlord-respondent no.3 has claimed a sum of Rs. 3000/- towards the monthly rent in accordance with the proviso of sub Clause 8 of Sec. 21 to the extent of 1/12th of 10% of the market value of the building under tenancy with effect from the date of the application.

Along with the application under Section 21 (1) (8) the respondent no. 3 has submitted the certificate and the report with regard to the market value of the property. It reads as under.

VALUATION REPORT FOR PROPERTY UNDER TENDENCY OF PUNJAB SIND BANK i.e. BASEMENT, GROUND FLOOR & FIRST FLOOR SITUATED AT MAJRA DELHI MUSSOORIE ROAD, (SAHARANPUR ROAD) DEHRADUN 248001.

This is to certify that the property under tendency of PSB i.e. Basement, Ground Floor, & First Floor situated at Majra, Delhi Mussoorie Road, (Saharanpur Road) Dehradun; with the following Schedule of Property description:

SCHEDULE OF PROPERTY:

NORTH : Property of the owner
SOUTH : 12'-0"Vide village Road
EAST : Saharanpur Road.
WEST : Rice Mill.

The Land measuring 93'-3" x 42'-6' =3963 Sft of 368 Sqm as furnished by the owner, is valued as follows:

1. LAND VALUE: Rs.

Area 3963 sq. Ft. or 368 Sqm. @ Rs.200/=P.sqm.

73,600/-

2. BUILDING VALUE:

(i) Basement (Covered Area)

12’-0” x 27’-0” =324Sft. @ Rs. 180/= P. Sft.

58,320/-

(ii) Ground Floor (Covered Area)

43’-9” x 27’-0” = 1181.25 Sft.

18’-9” x 9’-0” = 168.75 “

10’-0” x 6’-0” = 60.00 “

1410.00 Sft. @ Rs. 160/-

2,25,600/-

P.Sft.

(iii) First Floor (Covered Area)

43’-9” x 29’-0” = 1268.50 Sft.

16’-0” x 9’-0” = 144.00 “

1412.50Sft.@ Rs.155/-

2,18,860/-

P.Sft.

B.F.Rs.

5,02,780/-

(iii) Railing, Culvert Etc. Lump Sum Rs. 8,000/=

Rs.

5,10,780/=

3. LESS DEPRECIATION :

For Basement + Ground Floor + First Floor +

Railing, Culvert etc.

(58,320+2,25,600+2,18,860+8000) = 5,10,780/=

5,10,780 x 0.9 x 16 = Rs. 91,940/=

80

TOTOL Rs. 4,18,840/=

SAY Rs. 4,19,000/=

The following data is used for the computation of the Building Cost:

(a) Approximation age of the Building 16 years
(year of construction as stated by the owner 1970) Total Life taken 16 years

(b) Estimated Future Life 80 “
Rs. 160/=; Basement Rs. 180/=; First Floor Rs. 155/=

(d) Depreciation allowed for Basement, Ground Floor and First Floor, Railing, Culvert etc.

SPECIFICATION:

The building is made of Ist. Class specification. The building is situated on Delhi Mussoorie Highway. It is double storey. Load bearing, R.C.C. Frame Structure. The walls are provided with Bricks in cement Mortar. The building is having grey mosaic cement flooring on all Floors. The building is surrounded by 41/2 high compound wall. The slab is R.C.C. The building is provided with water supply. Electric connection along with necessary fittings. All the walls are plastered and white colour washed inside and snowcem outside.

HENCE THE TOTAL COST OF THE PROPERTY WILL BE AS FOLLOWING:

Cost of the Land as per page2		Rs. 73,600/=
Cost of the Building as per page 3		Rs. 4,19,000/=
	Total	Rs. 4,92,600/=
	Say	Rs. 4,93,000/=

RUPEES: FOUR LAC NINETY THREE THOUSAND ONLY.

The petitioner has field a written statement and has denied that the value of the perperty is not 5 lac. He has also given the details of the market value of the property. The details are given below:

Pursuance to the request of the Lessee, I inspected and surveyed the abovesaid property. Information furnished to me by the believed by me to be true. The value is based on taking into knowledge and experience:

Description of Valuation.

The property consisting of free hold plot of land measuring 3963 Sq.ft. situated at Vill. Majra, Saharanpur Road, Dehradun. The land-rate has been worked out on the basis of market/circle rate of 1986, and the construction value has been worked out on the basis of Construction/Constructed in 198/

Area of land	: 3963 or 0.009 acre
Land-rate by market rate of 1986	: Rs. 50,000/- per Bigha
Total Cost of land	: Rs. 24,463/-
Structure Value	: 1. Baseement Area 324 Sq. Ft.at
Constructed in 1968 with Material and labour charges	Rs. 110/- per Sft.= 35,340/-

Complete with railing culvert etc. 2. Ground Floor area 1181 Sq.ft.

@ Rs. 80/- per Sq. ft. 84,670/-

3. Ist Floor area 1181 Sq. ft. @

Rs. 70/- per sq. Ft.=82,670/=

Total Constn. Value =2,12,520/-

Less depreciation of constn. $\frac{2,12,520 \times 0.9 \times 25}{100}$ = 47,870/-

Net construction Value - = 1,64,703/-

Total Value of the property
1,89,166/-

(Rupees One lac eight nine thousand one Hundred sixty six)

Part-III Declaration

I herby declare that-

(a) The information furnished in Part-I is true and correct to the best of my knowledge and belief.

(b) I have no direct or indirect interest in the property valued.

(c) I have personally inspected the property on 15.4.1987.

(d) I have not been convicted on any offence and sentenced to a term of imprisonments.

(e) I have not been found guilty of mis-conduct in my professional capacity.

Thus according to the landlord the market value comes to Rs.4,93,000/- whereas from the side of the petitioner it has been estimated to the extent of Rs. 1,89,166/-.

The value of the landlord has also filed his own affidavit. On behalf of the petitioner the affidavit of Gurjeet Singh Manger Punjab and Sind Bank was filed. The Prescribed Authority has considered both the reports and has come to the conclusion that the report submitted by respondent-landlord is more reliable whereas the report submitted by the petitioner has not been field by any specialized person. The Prescribed Authority, therefore, has fixed the rent to the extent of Rs. 3,000/- per month. The petitioner preferred an appeal. The appellate court has dismissed the appeal.

Counsel for the petitioner has relied upon the copy of the lease deed. Both the courts below have recorded a finding by observing that since the landlord has no right to get the premises evicted from the possession of the tenant, therefore, he has a right to get the rent enhanced alone. Section 21 (1) (a) provides as under:

> *"(8) Nothing in clause (a) sub-section (1) shall apply to a building let out to the State Government or to a local authority or to a public sector corporation or to a recognized educational institution unless the Prescribed Authority is satisfied that the landlord is a person to whom clause (ii) or clause (iv) of the Explanation to sub-section (1) is applicable:*
>
> *Provided that in the case of such a building the District Magistrate may, on the application of the*

landlord, enhance the monthly rent payable therefore to a sum equivalent to one-twelfth of ten per cent of the market value of the building under tenancy, and the rent so enhanced shall be payable from the commencement of the month of tenancy following the date of the application:

Provided further that a similar application for further enhancement may be made after the expiration of a period of five years from the date of the last order of enhancement."

In *Punjab National Bank vs. Sugan Chandra and another 1985 (1) ARC* 237 bench of Alld. High Court it has been held as under:

"A landlord seeking to evict a corporation cannot resort to Section 21 (1) (a) on ground of bona fide requirement."

In Indian Bank Vs. VIIth A.D.J. 1993 (2) ARC 21 it has been held that the right for enhancement of rent cannot be waived. The observations are quoted below:

"The public policy underlying the amended provisions is, therefore, apparent. This policy appears to be to protect the interest of a particular section of the public i.e. landlords of public buildings and the buildings let out to public Corporations and recognized educational institutions who did not have any right to seek eviction of the tenant even after satisfying the restrictions/requirements contemplated under Section 21 (1) (a) of the Act. As a necessary implication the landlords of buildings falling within the purview of the Act which were continuing to be under tenancy or came under tenancy were divided into two separate categories. One category of the landlord was that which

could exercise the right secured under Section 21 (1) (a) of the Act and the other which had no such right. The position of the landlords of public buildings and the buildings occupied by Public Sector Corporations and recognized institutions as indicated above naturally terms out to be that of 'opporessed persons' who had to give way to the right of the tenants to continue in occupation of the premises let out to them. The only relieving feature was that such tenants were to be under on obligation to enhance the rent in accordance with the procedure prescribed under the provisions contained in Section 21 (1) (8) of the Act at an interval of five years. In the aforesaid circumstances, therefore, there cannot be any room for the application of another general and familiar principle of the law that a person may, if he wishes, disclaim a statutory provision enacted for his benefit for, as pointed out in the Hoongs' case, what is for a man's benefit and what is for his protection are not synonymous terms. The new social policy it seems to me was to protect the right of the landlord who fell in the category referred to above and constituted a definite and specified section of the public.

In view of what has been sated above, I am clearly of the opinion that the clause referred to by the tenant contained in the lease deed on which strong reliance has been placed indicating that the landlord had himself put the ceiling on the upper limit of the rent in respect of the building is void for it seeks to withhold the protection provided to a member of a protected class as indicated above, in contravention of the social policy animating from Section 21 (1) (a) and Section 21 (a) (8) of

the U.P. Act No. 13 of 1972. All such devices agreements and arrangements will be deemed to be contrary to law and cannot be utilized as a defence by the tenant which tend to abridge the rights of the landlord secured under the policy to which a reference has been made above.

Under the scheme of U.P. Act No. 13 of 1972 it is noticeable that although in the provisions contained in Section 7 and Section 26 (3), the legislature had clearly used by language 'subject to any contract in writing to the contrary' no such stipulation has been provided for in Section 21 (1) (8) of the Act. Therefore, in the absence of any such stipulation any agreement about a particular ceiling of the amount of rent will have to give way to the right to get it enhanced above that ceiling which right stands protected under the Act. Further in the present case the clause in the agreement in question has to be nullified being in disobedience to a rule of public policy underlying the amended provisions of U.P. Act No. 13 of 1972 which is clearly implicit."

Similar view has been taken in 1999 (II) A.R.C. page 841 Punjab National Bank Vs. IIIrd Addl. District Judge, Dehradun and others, the observations are quoted below:

"The consequences mentioned in Section 21 (8) follow on satisfaction of the conditions mentioned in that sub-section. If the Act is applicable then a landlord has to satisfy three conditions under Section 21 (8) of the Act. (i) The premise is let out to the persons mentioned in the Section 21 (8) of the Act. (ii) The rent is less than the rent calculated on the basis mentioned in the 1st proviso to that sub-section. (iii) The application is field after expiration of five years from the date of the last order of enhancement (2nd Proviso). Section 21 (8) mentions

Section 21 (1) (a) because application for release is filed under Section 21 (1) (a), but it does not mean that the landlord has to allege or prove that he bonafide requires the premises in an application under Section 21 (8) of the Act.

Sri Grover Counsel for the Bank has submitted that the parties had entered into an agreement on 9.12.1968 by which the rent was enhanced to Rs. 530 per month and as the rent was mutually agreed between the parties, no application under Section 21 (8) was maintainable. This point has been considered and decided in favour of the landlord by three Single Judge decisions of this Court reported in M/s Tyre Corporation of India V. Krishnalal, 1994 (1) ARC 358, Indian Bank v. VIIth Addl. District Judge, Muzaffarnagar, 1993 (2) ARC 21 and State of U.P. v District Judge, Dehradun 1998 (2) ARC 554. I have my reservation for this view, but nothing has been argued or brought to my notice to differ and refer it to a Larger Bench. I have the matte here."

In 1996 (2) ARC, 672 ***New India Assurance Co. Ltd. and another V. VIIIth Additional District Judge, Gorakhpur and others,*** it has been held that any order passed by compromise will not debar the landlord from moving the application under Sec. 21 (1) of the Act. The observations are quoted below:

"The contention advanced by the Counsel for the petitioner is misconceived. The so-called order of enhancement of rent was, in fact, not an order of enhancement within the meaning of Section 21 (8) of the Act. In fact, the rent was earlier enhanced under a compromise reached between the parties in proceedings under Section 21 (1) (a) of the Act. A perusal of Annexure 7 to the counter affidavit would signify

that the monthly rent of the premises in dispute was re-fixed at Rs. 500 per month with effect from 1-1-1986 and the proceedings under Section 21 (1) (a) culminated in being decided in terms of the said compromise It being not an order characteristic of the order of enhancement under sub-section (8) of Section 21 of the Act, the bar created by second proviso to Section 21 (8) of the Act, would not apply."

The proviso to Sec. 21 (1) (a) gives the landlord a right to get the enhancement and the similar application within a period of five years has been held to be not maintainable. As held in ***Satyawati Devi Vs. II ADJ Muzaffranagar and ors. 2003 (1) ARC page 392 quoted below:***

From the above it is amply clear that the bar in moving any application for enhancement is applicable to the order of enhancement made under the said provision which bars moving any such application within 5 years from last order of enhancement. Thus in case any order of enhancement has been made by the Court under proviso to bus section (8) of Section 21 of the Act, then the landlord can not approach the Court again within five years from the date of the said enhancement. There is no bar of five years in filing an application for enhancement under the aforesaid provision from the date of fixation of rent as per agreement. In the case in hand, it is true that the accommodation was let out long back and from time to time the rent was enhanced as per agreement and also when some newly constructed portion was also given in the tenancy of the respondents. It is no body's case that any of the enhancement earlier was made by the intervention of the Court under the aforesaid provision. Therefore, since there was no order of enhancement made under the above proviso, the bar of five years under the second

proviso will not applicable to the present case. In taking this view I get support from the earlier judgment of this Court rendered in ***New India Assurance Co. Ltd. and another V. VIIIth Additional District Judge, Gorakhapur and others, 1996 (2) A.R.C. 674.*** *In view of the aforesaid, in my opinion, the view taken by the respondent No.1 was wrong and this part of the judgment deserves to be quashed.*

No agreement can bar the application under Sec. 21 (1) (8) of the Act. The landlord has every right to file an application under Sec. 21 (8) for enhancement even in pursuance of lease deed between the parties as held in view of the judgment in ***M/s Tyre Corporation of India ltd. vs. Krishan Lal and others 1994 (1) ARC page 358.*** The observations are quoted below:

"As regard the maintainability to the application is concerned, the only ground taken in the objection was that There was a registered agreement between the parties fixing the rate of rent and, therefore, the application was not maintainable. This Court has already decided this controversy in ***Indian Bank v. VIIth Addl. District Judge and others, 1993 ALJ 1263*** *and it has been held that even though there may be an agreement between the parties limiting their rights regarding the rate of rent, still the landlord has a right to file an application for enhancement of rent under Section 21 (8) of the Act, provided necessary conditions mentioned in the said sub-section are satisfied. The finding recorded by the Appellate Authority on the question of maintainability of the application is correct."*

In ***Deepak Kumar Tyagi and others v. Vth Additional District Judge, Saharnapur reported in 1994 (1), ARC Page 510,*** the guideline has been provided for

enhancement of the rent.. The guide line is reproduced as under:-

"Where no other data are available, two methods are adopted for determining the market value of a building:-

(i) The rent normally realized if let, or if not let, the expected rent and capitalizing it by number of years' purchase of the annual rent derived from the property' and

(ii) By valuing the land and the building separately and adding the value of one to the other.

"The first method cannot adopted in the case where the rent of the building has to be enhanced on the basis of the market value. It is then the last method i.e. by ascertaining the value of the land and the cost of the construction on it. The last method has been taken as very weak method because some time it does not represent the real market value of the property. In a case, where the building on the ground floor is used for commercial purpose and first floor for residential purpose and basement for different purpose each one has its own independent value. If a willing purchaser goes to purchase shops or commercial portion of the building he will pay a higher price and for residential portion on the first floor he will pay lesser price. The value of the basement will be differently assessed."

With regard to the calculation of the rent the market value alone is the criteria for fixing the rent. ***In Smt. Padma Tandon V. District Judge, Allahabad and others reported in 1992 (2) ARC page 180.*** It has been held that while fixing the valuation market should be the criteria and not on the letting value or municipal assessment. It has been held as under:-

"The rate fixed by the District Finance Officer for the market value of the land at Rs. 100 per Sq. Meter as the minimum and Rs. 125 per Sq. meter award. According to the lenred Judge the market price fixed by the District Finance Officer was for the purposes of stamp duty. But the same price would not be available where the building is under tenancy and in occupation of the State and possession of which would not be available within a reasonable time after the sale. Thus no willing purchaser would offer the aforesaid price fixed for the purposes of registration. In my opinion, the lenred Judge was not correct in ignoring the value of the land as fixed for the purposes of stamp duty by the Government itself. The aforesaid rates of the State Government have both outer limit and the inner limit to cover all such contingencies and there may be some further special reasons from deviating from the aforesaid valuation. But there seems to half of the value as fixed by the State Government which was the circle rate prevailing at the relevant time. The very purpose of the enactment for enhancement of rent of the building occupied by the Government would frustrate for fixation of market value in case the consideration is, that, as the possession of the buildings is not readily available, the willing purchaser would pay very low price. The provision of Section 21 (1) (a) of the Act are not available to the landlord and, as such, he is adequately compensated by reasonable rent possessed on the basis of market value. In my opinion, the market value for the purpose of Section 21 (8) of the Act has to be assessed irrespective of the consideration as to what value the willing purchaser would offer in case the

possession of the building is not readily available. The consideration of timely possession would not be applicable in the present case for determination of market value."

"In my opinion, the interest of landlord of such buildings have been adequately taken care by making suitable provisions and providing for the assessment of rent on the basis of market value and not on the basis of letting value or annual rental value or on the basis of Municipal assessment. The learned Jude grossly erred in taking into consideration the fact that the disputed building would remain under the tenancy and this aspect would completely diminish the value of the building and the prospective purchaser of the property would not invest any sum."

It is settled law that value of the land has also to be calculated while determining the rent as held by the Apex Court. *In Punjab and Singh Bank V. VIIth ADJ, Bulandshahar and others 2000(1) ARC page 431.* After relying upon the judgment of Apex Court it has been held as under:

" It is wall settle in law that the value of the land on which the building is situated, is to be included in the market value of the building while determining the market value under the aforesaid proviso. A reference in this regard may be made to the decision in ***Central Bank of India and others v. IInd Additional District Judge, Jhansi and others, 1989 (1) ARC 340 (SC); State of Uttar Pradesh and others v. VIIth Additional District Judge, Saharanpur and others, 1992 (2) ARC 571 (SC), State of Uttar Pradesh and others ARC 265 and State of Uttar***

Pradesh v. Roop Kishore Tandon and others, 1987 (2) ARC 359.

Determination of valuation of the building is being taken after taking into consideration the value of the land also. The Apex Court in ***1992 (2) ARC Page 571 in State of U.P. and others V. XIIth Additional District Judge, Saharanpur and others*** has held as under:

> *"After giving out anxious consideration to the facts and circumstances of the case, it appears to us that in the definition of building under Section 3 (i) of the Act, there is no express exclusion of the value of the land on which the building stands. In the absence of such express exclusion, the land being intrinsically inseparable from the building standing thereon, the value of the land and the value of the structure or building should be taken into consideration and in our view the land on which the building stands together with the building or structure constitute one composite unit. It may be indicated that the value of two similar buildings or structure standing on similar parcel of land my differ substantially on account of locational advantage of the site in question. The difference of valuation of land because of such locational advantage creepts into the valuable than the other although from the structural point of view, both he buildings are identical. In the aforesaid circumstances, the determination of valuation of the building by taking into consideration the value of illegal and improper. In any case, the definition of :building" under the Act clearly shows that the building there under means roof structure including the land underneath the said*

structure. Inclusive part of the definition only relate to the land appurtenant to such building and not to the land underneath the roof structure."

The landlord has stated that the lease has already expired on 14.7.1983. Further the statutory right of the landlord under Section 21 (8) of the Act with regard to enhancement of rent cannot be affected by any agreement or lease.

The two courts below have recorded the finding that the market value although is much more than Rs. 3000/- per month towards rent but taking into consideration the rental of Rs. 3000/- only, the findings recorded by the two courts below are findings of fact and can not be interfered under Article 226 of the Constitution of India. The courts below have also relied upon the report of the approved value.

In the present case there has been no order of enhancement in proceedings under Section 21 (1) (8) of the Act so as to deprive the landlord from moving the application under Section 21 (1) (8) of the Act and therefore the orders passed by the courts below while fixing the amount to the extent of Rs. 3000/- per month is not liable to be interfered under Article 226 of the Constitution of India.

Conclusion

Both he courts below having recorded the findings of fact after relying upon the values of the landlord, I find no infirmity in the order passed by the courts below under Article 226/227 of the Constitution of India so as to interfere in the method of calculation of the courts below in taking into account the value of the land and building in accordance with the provision to sub section (8) of U.P. Act No. 13 of 1972.

The writ petition is concluded by findings of the fact as held in ***Surya Dev Rai Vs. Ram Chander Rai and others 2004 (1) ARC page 519*** para 7 to be quoted below:

> ***In Surya Dev Rai v. Ram Chander Rai and others, JT 2003 (6) 465: 2003 SCFBRC 512:2003 (2) ARC 385.*** *it has been held by the Supreme Court that neither in the writ of certiorari nor in supervisory jurisdiction under Article 227 of the Constitution, mere errors of fact or of law cannot be corrected unless it is found that the error is manifest and apparent on the fact of the proceedings such as when it is base on clear ignorance or utter disregard of the provisions of law and a grave injustice or gross failure of justice has occasioned thereby. Since the writ petition has been filed by taking new pleas which have never been taken earlier in the litigation between the parties, I am of the view that the writ petition is to be dismissed."*

Relying upon the earlier judgment in the case of Surya Dev Rai Vs. Ram Chadner, SCC 2003 Vol. 6 page 675, the Apex Court has held in the case of Ranjit Singh Vs. Ravi Prakash (2004) 3 Supreme Court Cases 682 as below:

> *"In Surya Dev Rai Vs. Ram Chander Rai this Court has ruled that to be amenable to correction in certiorari jurisdiction, the error committed by the Court or authority on whose judgment the High Court was exercising jurisdicitio0n, should be an error which is self-evident. An error, which needs to be established by lengthy and complicated arguments or by indulging in a long-drawn process of reasoning, cannot possible be an error available for correction by writ of certiorari. If it is reasonably possible to from two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent*

error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in Surya Devi Rai that the jurisdiction was not available to be exercised for indulging in re-appreciation or evaluation of evidence or correcting the errors in drawing inferences like a Court of appeal. The High Court has itself recorded in its judgment that- "considering the evidence on the record carefully: it was inclined not to sustain the judgment of the appellate Court on its own showing, the High Court has acted like an appeal Court which was not permissible for it to do under Article 226 or 227 of the Constitution."

The writ petition lacks merit and consequently the same is dismissed. No order as to costs.

Dt. 24.11.2004 **(Rajesh Tandon, J.)**

P. Bandhavakar